

Shea, Valois

From: Nancy <nhilshat@rapidnet.com>
Sent: Friday, June 16, 2017 3:45 PM
To: Hoppe, Allison; Shea, Valois
Cc: Nancy Hilding
Subject: Dewey Burdock Mine Permit- Federal Register review of EPA's CRF 40 CFR 124.9 (b) (6)

Nancy Hilding
President Prairie Hills Audubon Society
P.O. Box 788
Black Hawk, SD 57718
June 16, 2017
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Dear Allison Hoppe and Valois Shea,

RE: Rule creation for EPA's CRF 40 CFR 124.9 (b) (6)

Can either of you give me the publication date for the Federal Register Notice of publication of the CFR rule set that CRF 40 CFR 124.9 (b) (6) belongs within. This rule exempts EPA permitting via underground injection control (UIC) from NEPA.

I wish to see the justifications for adoption of this rule set and that would normally be explained in a preamble for the rule in the Federal Register, when it was adopted.

I ask for this information to help write my comments on Dewey Burdock In-situ Leach Application.

I wish to understand which legal argument EPA uses to exempt itself from NEPA for UIC.

As I understand it courts have exempted agencies from the procedural requirements under NEPA where the court thinks that either:

- (1) a direct conflict between NEPA and the organic statute authorizing agency action exists, or
- (2) NEPA procedures will be redundant with those provided for under the organic statute due to either displacement or functional equivalence.

I ask that you fully disclose those legal arguments in your final permit documents... fully explain how and why EPA chose to pass CFRs exempting itself from NEPA for UIC. Please fully disclose which legal rationale you tie to. If it is "functional equivalence"; we believe you need to show how you are achieving "functional equivalence" or have redundant procedures to NEPA.

Thanks,

Nancy Hilding

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